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July 13, 2009

BY HAND DELIVERY

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Re: TCEQ Docket No. 2007-1820-AIR and 2008-1210-AIR; Consolidated SOAH Docket No. 582-08-0861; *Application of NRG Texas Power LLC for State Air Quality Permit 79188 and Prevention of Significant Deterioration Permit PSD-TX-1072 and Hazardous Air Pollutant Major Source [FCAA § 112(g)] Permit HAP-14*

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of Applicant NRG Texas Power LLC's Exceptions to the Proposal for Decision and Order of the State Office of Administrative Hearings.

Please file the original document in the above-referenced proceeding and return a file-stamped copy to me via the courier. By my signature below, I certify that a copy of this filing has been served on Judge Bennett and Judge Broyles and the parties to this matter as indicated below.

If you have any questions concerning this filing, please do not hesitate to contact me at the number above.

Sincerely,



Derek R. McDonald

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JUL 13 PM 4: 42
CHIEF CLERKS OFFICE

Enclosures

cc: *(With Enclosure)*
The Honorable Craig R. Bennett (via Hand Delivery)
The Honorable Tommy L. Broyles (via Hand Delivery)
Garrett Arthur (via Hand Delivery and Electronic Mail)
Booker Harrison (via Hand Delivery and Electronic Mail)
James Blackburn, Jr. and Charles Levine (via U.S. Mail and Electronic Mail)
Wendi Hammond (via U.S. Mail and Electronic Mail)
Ilan M. Levin and Layla Mansuri (via U.S. Mail and Electronic Mail)
Charles E. Morgan (via U.S. Mail and Electronic Mail)
John M. Quinlan (via U.S. Mail and Electronic Mail)

CONSOLIDATED SOAH DOCKET NO. 582-08-0861
TCEQ DOCKET NO. 2007-1820-AIR AND 2008-1210-AIR

APPLICATION OF NRG TEXAS § BEFORE THE TEXAS COMMISSION
POWER LLC FOR STATE AIR §
QUALITY PERMIT 79188 AND §
PREVENTION OF SIGNIFICANT §
DETERIORATION AIR QUALITY § ON
PERMIT PSD-TX-1072 AND §
HAZARDOUS AIR POLLUTANT §
MAJOR SOURCE [FCAA § 112(g)] §
PERMIT HAP-14 § ENVIRONMENTAL QUALITY

APPLICANT NRG TEXAS POWER LLC'S EXCEPTIONS
TO THE PROPOSAL FOR DECISION AND ORDER OF
THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS
COMMISSION
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QUALITY
2009 JUL 13 PM 4:42
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Applicant NRG Texas Power LLC (“NRG” or “Applicant”) submits the following exceptions to the Proposal for Decision and Order of the State Office of Administrative Hearings (“SOAH”) in the above-captioned matter. The Administrative Law Judges (“ALJs”) recommend approval of NRG’s application for State Air Quality Permit No. 79188/Prevention of Significant Deterioration (“PSD”) Permit No. PSD-TX-1072 (the “State Air Quality/PSD Application”) and issuance of State Air Quality Permit No. 79188/PSD Permit No. PSD-TX-1072 (the “State Air Quality/PSD Permit”). While finding that NRG’s application for Hazardous Air Pollutant Major Source [FCAA § 112(g)] Permit No. HAP-14 (the “MACT Application”) and Permit No. HAP-14 (the “MACT Permit”) establish an appropriate case-by-case maximum achievable control technology (“MACT”) emission limit for mercury, the ALJs recommend remand of the MACT Application based on their conclusion that the application lacks sufficient detail regarding NRG’s proposed mercury controls.

In the Proposal for Decision (“PFD”), the ALJs acknowledge that their decision on the narrow point of the MACT Application can be viewed as “an elevation of form over substance” and recommend that the Commission issue the MACT Permit if it interprets the MACT requirements differently. The Commission should issue the MACT Permit, based not only on a different interpretation of the applicable MACT requirements, but also on the evidence in the record regarding mercury controls that the ALJs have wrongly discounted in preparing the PFD. The PFD ignores the substance in the application regarding the control technologies that NRG will use to control mercury emissions from Limestone Unit 3, as well as the Executive Director’s determination that the information provided by NRG regarding the proposed mercury emissions controls is sufficient to assure compliance with the MACT Permit’s stringent mercury limit. NRG respectfully urges the Commission not to adopt the ALJs’ proposed findings with respect to the sufficiency of the mercury control technology information in the MACT Application, and to adopt an Order approving both the State Air Quality/PSD Application and the MACT Application and issuing the State Air Quality/PSD Permit, with NRG’s proposed correction to new Special Condition No. 43 proposed by the ALJs, and the MACT Permit.¹

¹ The specific proposed findings and conclusion to which NRG excepts are identified in Section II below. NRG’s requested changes to those findings and conclusions are included at Attachment A.

I. Introduction

This matter involves two preconstruction air quality permit applications filed by NRG seeking authorization to construct a new super-critical pulverized coal-fired electric generating unit, along with an auxiliary boiler and the associated fuel and material handling systems, at NRG's existing Limestone Electric Generating Station ("Limestone Station").

NRG submitted an initial application to the TCEQ seeking State Air Quality and federal PSD permits to construct new Limestone Unit 3 and the associated facilities (collectively, the "Limestone Unit 3 project") on June 12, 2006. The Executive Director made its preliminary decision to approve the application and issued the draft State Air Quality/PSD Permit on October 8, 2007 upon concluding that the Limestone Unit 3 project facilities will employ best available control technology ("BACT") and that the Limestone Unit 3 project emissions will be protective of the public health and property.

Following NRG's request for direct referral to SOAH, the preliminary hearing on the State Air Quality/PSD Permit was held in January 2008. In response to a March 2008 decision by the U.S. Court of Appeals for the D.C. Circuit that arguably triggered the applicability of preconstruction case-by-case MACT review for Limestone Unit 3, however, the ALJs abated the hearing to allow NRG to address the newly applicable MACT requirements. NRG submitted a second air quality application to TCEQ that sought a case-by-case MACT permit for the Limestone Unit 3 project on May 12, 2008. The Executive Director made its preliminary decision to approve the application and issued the draft MACT Permit on July 18, 2008, establishing case-by-case MACT emission limitations for all hazardous air pollutants ("HAPs") and related compliance demonstration requirements for Limestone Unit 3 and the Limestone Unit 3 project auxiliary boiler. As it had with the State Air Quality/PSD Application, NRG requested direct referral of the MACT Application to SOAH, and ALJs Tommy Broyles and Craig Bennett consolidated the two contested case hearings under SOAH Docket No. 582-08-0861.

The evidentiary hearing in this matter was held from February 23-27, 2009. The ALJs issued the PFD on June 23, 2009. The ALJs recommend approval of the State Air Quality/PSD Application and issuance of the State Air Quality/PSD Permit with the following modifications:

- Lower the annual average total PM/PM₁₀ emission limit from the Executive Director's BACT determination of 0.035 lb/MMBtu to 0.025 lb/MMBtu
- Lower the 30-day rolling average emission limit for NO_x from the Executive Director's BACT determination of 0.07 lb/MMBtu to 0.06 lb/MMBtu
- Lower the 30-day rolling average emission limit for CO from the Executive Director's BACT determination of 0.15 lb/MMBtu to 0.12 lb/MMBtu
- Include Special Conditions Nos. 42 and 43 establishing as permit conditions NRG's voluntary commitment to no net increase in site-wide emissions of SO₂, NO_x and mercury from the Limestone Station despite the addition of Limestone Unit 3
- Include Special Condition No. 44 requiring NRG to install and maintain a physical barrier around the entire Limestone Station property boundary used for air dispersion modeling

As explained below, the emission limits for total PM/PM₁₀, NO_x and CO from Limestone Unit 3 proposed in NRG's State Air Quality/PSD Application and established in the State Air Quality/PSD Permit following the Executive Director's technical review of the application represent BACT. The ALJs' proposed emission limits for total PM/PM₁₀, NO_x and CO unquestionably represent emission limits that are beyond, and therefore more stringent than, BACT, although NRG can commit to operate the state-of-the-art emissions controls planned for Limestone Unit 3 in a manner that will achieve the lower emission limits proposed by the ALJs.

In contrast to the State Air Quality/PSD Permit, the ALJs approve all of the emission limits in the MACT Permit, including the MACT emission limit for mercury. The ALJs do not find fault with, or object to, any term or condition of the MACT Permit. Nevertheless, the ALJs recommend remand of the MACT Application, based on their flawed conclusion that the application lacks sufficient detail regarding the emissions control technologies that NRG will use to control mercury emissions from Limestone Unit 3. NRG excepts to this conclusion, for the reasons set forth below.

II. Summary of NRG's Exceptions in Support of its MACT Application

NRG concurs with the ALJs' conclusion that the MACT Permit establishes emission limits for mercury and other HAPs (or HAP surrogates) that represent MACT. NRG excepts, however, to the following proposed findings of fact and conclusion of law that relate to the information in the application regarding NRG's proposed emissions controls for mercury:

Findings of Fact

32. Except in regard to mercury control technology, the Case-by-Case MACT Application contains all of the required elements of an FCAA section 112(g) preconstruction permit application filed under Chapter 116 of TCEQ's rules.
291. NRG's Case-by-Case MACT Application did not specify a control technology selected by NRG that, if properly operated and maintained, will meet the proposed MACT emission limitations.
292. NRG's Case-by-Case MACT Application did not identify technical information on the design, operation, size, estimated control efficiency of a control technology it intended to use for controlling mercury emissions at Limestone Unit 3.
293. NRG's Case-by-Case MACT Application did not identify supporting documentation including identification of alternative control technologies considered by NRG to meet the proposed emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology.
294. NRG has not identified a specific control technology it intends to use to control mercury emissions at Limestone Unit 3.

Conclusion of Law

43. NRG's Case-by-Case MACT Application is deficient because it did not contain the information required by 40 C.F.R. § 63.43(e)(1) and (2)(xi)-(xii) in regard to mercury emissions control technology.

Order

3. The application of NRG Texas for a federal Clean Air Act section 112(g) case-by-case maximum achievable control technology (MACT) determination fails to satisfy applicable requirements and is therefore remanded to allow NRG Texas to satisfy the Case-by-Case MACT requirements

All of NRG's requested changes to the Proposed Order are included at Attachment A.

The ALJs are correct in acknowledging that the proposed findings and conclusion quoted above can be characterized as "an elevation of form over substance." PFD at 3. The MACT Permit establishes a mercury limit for Limestone Unit 3 that the ALJs recognize as MACT. NRG will be required to demonstrate compliance with that limit with a continuous monitoring system. And NRG has made a voluntary commitment, made enforceable by the State Air Quality/PSD Permit, not to increase mercury emissions site-wide from the Limestone Station despite the addition of Limestone Unit 3.

As much as it elevates form over substance, however, the ALJs' recommendation to remand the MACT Application disregards (1) the detail included in the State Air Quality/PSD and MACT Applications regarding the suite of control devices that will control mercury emissions from Limestone Unit 3, (2) NRG's enforceable application representation that it will install sorbent injection "or other effective mercury control" to enhance the mercury control performance of the fabric filter and wet flue gas desulfurization ("wet FGD") system, (3) the reasoned judgment of the experienced TCEQ permit writer that NRG had proposed emissions controls capable of achieving the stringent MACT emission limit established for mercury from Limestone Unit 3, and (4) the requirement in Special Condition No. 21 of the MACT Permit that NRG, prior to start-up, submit to the Executive Director the final plans and engineering specifications for all emissions control equipment for Limestone Unit 3 — including the mercury-specific control measure.

NRG requests that the Commission uphold the Executive Director's determination that the MACT Application satisfied all applicable requirements and adopt an Order approving the MACT Application and issuing the MACT Permit.

III. The MACT Permit establishes an enforceable case-by-case MACT emission limit for mercury and should be issued.

A. The MACT Permit establishes a MACT emission limit on mercury from Limestone Unit 3.

1. MACT is an *emission limitation*.

The purpose of the FCAA § 112(g) case-by-case MACT program is to establish case-by-case MACT emission limits. Despite the presence of "control technology" in its name, MACT is an emission limitation. Applicant's Ex. 71 at 10:19-24 (C. Campbell). TCEQ rules define "Maximum achievable control technology (MACT) emission limitation for new sources" as follows:

The emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the executive director, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

30 TAC § 116.15(7) (emphasis added); *see also* federal Clean Air Act (“FCAA”) § 112(g)(2)(B) (“After the effective date of a permit program under subchapter V of this chapter in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the administrator.”) (emphasis added). Consistent with the FCAA and this definition from the Texas rules, an applicant identifies the MACT floor not based on installed control technology, but rather on the emission limits actually achieved by the best-performing similar sources. NRG presented just such an analysis for mercury emissions from coal-fired electric generating units (“EGUs”) in the MACT Application. *See* Applicant’s Ex. 7 at 53-56 (MACT Application).

2. The ALJs correctly conclude that the stringent Limestone Unit 3 mercury emission limit represents MACT.

NRG’s case-by-case MACT evaluation generated the sliding scale mercury emission limitation proposed in the MACT Application for Limestone Unit 3. Applicant’s Ex. 7 at 55 (MACT Application). A sliding scale was selected to account for the fuel blends authorized for Limestone Unit 3 and the fact that bituminous coal-fired EGUs have achieved lower mercury emission limits than those achieved by EGUs burning subbituminous coals. Applicant’s Ex. 7 at 55 (MACT Application). The sliding scale mercury MACT emission limit reflects the most-stringent mercury emission limits demonstrated in practice for both subbituminous coal firing and the firing of subbituminous coal blends. Applicant’s Ex. 7 at 55 (MACT Application). The ALJs approved NRG’s case-by-case MACT determination for mercury, concluding that “the preponderance of the evidence indicates that NRG’s proposed emissions limits for mercury are consistent with MACT.” PFD at 112 (emphasis added).

There will be no doubt about NRG’s compliance status with respect to the mercury MACT emission limit for Limestone Unit 3. The MACT Permit requires that NRG demonstrate compliance with the mercury MACT emission limit using a continuous monitoring system (“CMS”). Applicant’s Ex. 9 at 3 (MACT Permit). As the Executive Director stated in its response to public comment on the MACT Application:

Furthermore, the Applicant used control efficiencies for the various control techniques and devices to establish the MACT

limits for the various HAPs. While control efficiency is important, demonstration of compliance with the emission limits contained in the draft permit are the most appropriate means of demonstrating compliance with the MACT standards.

Applicant's Ex. 57 at 8 (Executive Director's Response to Public Comments, MACT Application) (emphasis added). Limestone Unit 3 is subject to a mercury limit in the MACT Permit that constitutes MACT, and NRG must demonstrate compliance with that limit on a continuous basis. Moreover, the mercury emission limit established in the MACT Permit is 25% to 50% more stringent than the mercury emission limit established for any other coal-fired EGU in Texas. Applicant's Ex. 49 at 32: 1-29 (W. Frazier); Applicant's Ex. 53, Tables WFF-11a & WFF-11b.

Even if NRG had failed to provide sufficient detail regarding the emissions controls that will be employed to reduce mercury from Limestone Unit 3 — which is not and will not be the case, as explained below — a remand of the MACT Application is illogical and unnecessary given that the MACT Permit itself requires compliance with a mercury emission limit that the ALJs approve as MACT.

3. Even with the addition of Limestone Unit 3, there will be no increase in emissions of mercury from the Limestone Station.

As part of the Limestone Unit 3 project, NRG made a voluntary commitment to have no net increase in site-wide annual emissions of NO_x, SO₂ and mercury from the Limestone Station, despite the addition of Limestone Unit 3. That commitment is made enforceable by proposed Special Condition No. 42 of the State Air Quality/PSD Permit. While NRG recognizes that its no net increase commitment does not affect MACT applicability, NRG's commitment highlights the inequity if the level of detail regarding the mercury control technologies is determined to be grounds for remand of the MACT Application. Not only have the ALJs determined that Limestone Unit 3 is subject to a mercury emission limit that constitutes MACT, but NRG has also made an enforceable commitment to operate Limestone Unit 3 and existing facilities at the Limestone Station in a manner that will ensure no site-wide increase in emissions of mercury despite the addition of Limestone Unit 3.

B. The MACT Application identifies a suite of control technologies that will be used to control mercury emissions from Limestone Unit 3.

NRG represents the following with respect to emissions controls for Limestone Unit 3 in the MACT Application, which was prepared by NRG's expert witnesses David Cabe and Colin Campbell:

The unit will be equipped with a low-NOx combustion system, a selective catalytic reduction (SCR) system, a wet Flue Gas Desulfurization (wet FGD) system using limestone as the scrubber reagent, sorbent injection or other effective mercury control, and a fabric filter. The proposed suite of controls, in combination with good combustion practices, is state-of-the-art for control of both criteria and HAP emissions.

Applicant's Ex. 7 at 18 (MACT Application). Sorbent injection is not the only element of the proposed suite of controls that will help reduce mercury emissions from Limestone Unit 3. As Ben Carmine, NRG's Director of Environmental Operations, testified:

Limestone Unit 3 will utilize low-NOx burners and selective catalytic reduction (SCR) to minimize nitrogen oxides (NO_x) emissions, a fabric-filter baghouse system to minimize particulate matter (PM) emissions, and a wet limestone flue gas desulfurization (FGD) system to minimize sulfur dioxide (SO₂) emissions. In addition, Unit 3 will incorporate a combination of these controls, along with a specific mercury control technology such as injection of sorbents or a fuel additive, to minimize mercury (Hg) emissions.

Applicant's Ex. 2 at 8: 26-33 (B. Carmine). Similarly, John Klumpyan, NRG's Director of Air Quality Control Systems Programs, testified that:

Mercury reduction will be accomplished through a combination of control from the SCR, baghouse and wet FGD, along with specific mercury control technology such as injection of sorbents or a fuel additive to oxidize fuel mercury for removal in the wet FGD system.

Applicant's Ex. 24 at 16:29-32 (J. Klumpyan). The consultant who prepared the State Air Quality/PSD Application, William Frazier, testified that:

Emissions of mercury will be controlled by the use of the SCR, fabric filter baghouse, and wet FGD, in conjunction with a

mercury-specific control technology such as halogen or sorbent addition.

Applicant's Ex. 49 at 20:36 - 21:5 (W. Frazier). NRG has consistently committed to this suite of mercury emissions controls — fabric filter baghouse, wet FGD system, SCR and sorbent injection — in this matter.

It is undisputed that all of these technologies will help control mercury emissions from Limestone Unit 3. NRG cited EPA's January 2004 proposed MACT standard for coal-fired EGUs in the MACT Application. In proposing that standard, EPA stated:

the Administrator has concluded that the application of fabric filters or ESP units along with wet or dry FGD is considered to be the most effective Hg control technology for units firing subbituminous, lignite, or waste coals; and that the application of fabric filters or ESP units, wet or dry FGD systems, and SCR is considered to be the most effective Hg control technology for units firing bituminous coals.

64 *Fed. Reg.* 4651, 4694 (Jan. 30, 2004) (*Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Proposed Rule*). As NRG explained in the State Air Quality/PSD Application:

Elemental mercury is insoluble in water and cannot be captured in wet or dry scrubbers. The predominant oxidized mercury compounds in fossil fuel flue gas are weakly to strongly soluble in water and can generally be captured to varying degrees in wet FGD systems and LSD-FGD systems. Both elemental and oxidized mercury can be absorbed onto porous solids such as fly ash or calcium-based sorbents for subsequent collection in a PM control device. Oxidized mercury is easier to absorb than elemental mercury. Particulate-bound mercury is attached to solids that can be readily captured in ESPs [electrostatic precipitators] and FFs [fabric filters].

Applicant's Ex. 6 at NRG 000056 (State Air Quality/PSD Application) (emphasis added); *see also* Applicant's Ex. 6 at NRG 000617-000619 (State Air Quality/PSD Application). Sorbent injection would not be the mercury emissions control for Limestone Unit 3; rather, sorbent injection is one element of a suite of emissions controls that will reduce mercury emissions from Limestone Unit 3. Sorbent injection functions as a mercury control enhancement. Sorbent

injection itself does not remove the mercury from the vent stream; rather, the sorbent enhances mercury capture by the fabric filter and wet FGD system by making the mercury easier to capture. *See* Applicant's Ex. 6 at NRG 000056 (State Air Quality/PSD Application).

EPA described the mercury control benefits of SCR, which are similar to that of sorbent injection, in the preamble to the 2004 proposed MACT standard for coal-fired EGUs:

Selective catalytic reduction. Although designed as a NO_x control technology, SCR has been shown in recent emissions testing to have the ability to transform certain species of Hg into other speciated forms that are easier for conventional PM and SO₂ controls to capture.

64 *Fed. Reg.* at 4676. All four elements of NRG's suite of mercury controls will contribute to the reduction of mercury emissions from Limestone Unit 3.

NRG recognizes that it will be required to enhance the performance of the fabric filter and wet FGD system to assure compliance with the MACT Permit's stringent mercury emission limit. Applicant's Ex. 7 at 56 (MACT Application); Applicant's Ex. 24 at 18: 7-14 (J. Klumpyan). While the MACT Application commits to the use of sorbent injection, it recognizes the potential for employing a different means of mercury emissions control. Executive Director approval would be required for NRG to vary from this enforceable application representation regarding the installation of sorbent injection. *See* 30 TAC § 116.116(a)(1). If NRG seeks authorization from the TCEQ at a later date to use a more-effective alternative to sorbent injection, this would affect only one element of the suite of control technologies that will reduce mercury emissions from Limestone Unit 3. More importantly, this representation does not render the MACT Application deficient of information regarding NRG's planned emissions controls for mercury.²

The ALJs' proposed Finding of Fact No. 294 that "NRG has not identified a specific control technology it intends to use to control mercury emissions at Limestone Unit 3" is

² NRG's intent is to take advantage of any developments in this rapidly-developing field — in fact, tests of new mercury-specific emissions control technologies are currently underway at the Limestone Station. Applicant's Ex. 24 at 18:15-30 (J. Klumpyan). Even if NRG supplied the Executive Director additional detail regarding a sorbent injection system, NRG would continue its evaluation of potentially more-effective or more-efficient mercury-specific emissions controls, until the date that it must order this component of the suite of emissions controls for Limestone Unit 3. NRG would be in no different position than it is today had it submitted additional detail regarding a planned sorbent injection system to the TCEQ.

simply incorrect. Far from it, NRG has identified four specific control technologies that will contribute to mercury control from Limestone Unit 3. While the record contains testimony that evidences NRG's interest in selecting the most-effective mercury control technology to enhance the performance of the fabric filter and wet FGD system, NRG's witnesses have consistently identified the suite of mercury controls, including the two devices that will actually capture mercury before it exits the Limestone Unit 3 stack.

C. NRG provided sufficient detail regarding the mercury emissions controls for approval of the MACT Application.

1. The Executive Director was able to conclude that the proposed emissions control technologies will ensure that Limestone Unit 3 achieves the MACT emission limit for mercury.

The MACT Application, as well as the State Air Quality/PSD Application that NRG filed with the TCEQ nearly two years earlier, identify the suite of technologies that NRG will use to control mercury emissions from Limestone Unit 3. The applications also provide available information regarding the preliminary design and operation of the planned mercury emissions controls. Control device tables with available design information were included in both the MACT Application and the State Air Quality/PSD Application for the fabric filter baghouse and wet FGD. Applicant's Ex. 7 at Appendix B, Tables 11 and 13 (MACT Application); Applicant's Ex. 6 at NRG 000098 and 000108 (State Air Quality/PSD Application).

The case-by-case MACT process establishes HAP emission limitations that are based on the emission rates achieved by the best-controlled similar sources. The control device information included in a case-by-case MACT application should allow the permit reviewer to conclude that the selected controls will achieve the emission limits identified as MACT:

Application for a MACT Determination. Section 63.43(e) of this rule describes the information the owner or operator is required to provide with an application for a MACT determination. . . . These information requirements are designed to identify the equipment to be controlled, and to demonstrate that the selected control technology for those units is consistent with or exceeds the requirements of the statute.

61 *Fed. Reg.* 68383, 68395 (Dec. 27, 1996) (adoption of 40 CFR § 63.43) (emphasis added). The statute requires that the State "determine that the maximum achievable control technology

emission limitation under this section for new sources will be met.” FCAA § 112(g)(2)(B) (emphasis added). The FCAA does not require that a case-by-case MACT application include specific elements, but rather that the permitting authority determine that the proposed source will be able to meet the MACT emission limit. NRG submitted a copy of the MACT Application to U.S. EPA Region 6, and EPA was given notice of the MACT Permit. Notably, EPA raised no objection to the information provided in the MACT Application, or to any element of the MACT Permit.

The Executive Director made a case-by-case MACT determination for mercury (and all other HAPs) in this matter. The information regarding the mercury emission control technologies in the MACT Application was sufficient for Mr. Jim Linville, a TCEQ Air Permits Division technical specialist with over 20 years of experience conducting control technology reviews, to conclude that Limestone Unit 3 can achieve the MACT emission limits established for Limestone Unit 3. 4 Tr. 899:5 - 900:5 (J. Linville). The Executive Director reached this conclusion through a well-established process that the TCEQ has long used in control technology determinations: a review of the emission limits achieved by best-performing similar sources. This was not the first case-by-case MACT determination that the Executive Director has made for a coal-fired EGU in Texas, and the Executive Director was not required to “break new ground” in performing its control technology review for Limestone Unit 3. Applicant’s Ex. 57 at 3 (Executive Director’s Response to Public Comments, MACT Application); 4 Tr. 899:5 - 900:5 (J. Linville). This control technology review has traditionally focused on emission limits and not specific control technology detail. As Mr. Linville testified during the hearing, the Executive Director does not require “detailed design criteria” regarding control technologies during permit review. 4 Tr. 956: 9-24 (J. Linville). Mr. Linville testified that, for a case-by-case MACT application, an applicant “could provide information on an option of controls that will all get to the same level, and that would be sufficient.” 4 Tr. 956:25 - 957:12 (J. Linville).

Mr. Linville’s testimony is consistent with the position taken by the Commission in ruling on a disputed control technology issue in the *Oak Grove Management Company* case in 2007. In its Final Order, the Commission stated that “[t]he Agency’s BACT guidance, practice, and rules do not require the degree of certainty of success required by the ALJs in this case. Only a reasonable expectation that the technology will work is required.” Applicant’s Ex. 84 at 45 (*Oak Grove Management Co.* Final Order (June 20, 2007)). There is no evidence in the

record to contradict the Executive Director's reasonable expectation that NRG's suite of mercury control technologies will sufficiently control mercury emissions to meet the MACT Permit limit.

The fact that the suite of mercury emissions controls identified by NRG in the MACT Application is identical to those employed by the best-controlled similar sources further supports NRG's ability to comply with the emission limit established as MACT for mercury. The Executive Director's Preliminary Determination Summary for the MACT Permit states:

It should be noted that the mercury emission limits presented above, Unit 4 at the Walter Scott, Jr., Energy Center in Iowa for subbituminous coal firing and the three bituminous coal fired boilers at the Brayton Point Station are based on the use of activated carbon injection in conjunction with state-of-the-art control equipment for reducing emissions of NO_x, SO₂ and particulate matter. This is the most effective of all identified mercury emissions control strategies, irrespective of cost, and is consistent with the planned air pollution control technologies for the LMS3 PC boiler.

Executive Director's Ex. ED-12 at 6 (Preliminary Determination Summary, MACT Permit) (emphasis added). The Executive Director approved the mercury MACT demonstration based on this determination that the suite of mercury controls proposed by NRG constitutes "the most effective of all identified mercury emissions control strategies, irrespective of cost."

2. NRG must submit plans and engineering specifications regarding mercury control technologies to the Executive Director.

Under the terms of the MACT Permit, detailed specifications regarding any emissions control technologies developed subsequent to issuance of the permit must be submitted to the Executive Director prior to start-up of Limestone Unit 3. Special Condition No. 21 of the MACT Permit states:

The holder of this permit shall submit to the TCEQ Waco Regional Office and the TCEQ Air Permits Division change pages to the permit application reflective of the final plans and engineering specifications on the PC Boiler and auxiliary boiler, including their respective control equipment, no later than 30 days before initial start-up of the PC Boiler. This information shall include:

- A. All TCEQ Tables in the permit application, updated with manufacturer and other specified data.

- B. Revised plot plans and equipment drawings as required to reflect the constructed facility.

Applicant's Ex. 9 at 12 (MACT Permit). This permit condition ensures that updated control device tables and any other information regarding an emissions control device or technology used to control emissions of mercury and other HAPs from Limestone Unit 3 will be submitted to the Executive Director as an application update that will be available to the public. This permit condition further ensures compliance with all applicable control technology rule and permit requirements.

D. The MACT Application, where appropriate, identified and evaluated alternative control technologies.

The ALJs' proposed Finding of Fact No. 293 that the MACT Application did not provide supporting documentation relating to the consideration of alternative control technologies overlooks NRG's "beyond-the-floor" analysis of wet electrostatic precipitator technology as part of the MACT Application.

As described in the MACT Application, a case-by-case MACT analysis consists of two steps. First, the applicant establishes the "MACT floor" or most stringent emission limitation achieved in practice by the best-controlled similar source. Next, the applicant performs a beyond-the-floor analysis of other methods for potentially reducing emissions to a greater degree, considering factors such as the cost of achieving such emission reductions, any non-air quality health and environmental impacts, and energy requirements. Applicant's Ex. 7 at 53 (MACT Application).

NRG did evaluate potential alternatives to the proposed suite of HAP controls in the MACT Application. As part of its beyond-the-floor analysis for non-mercury HAP metals and acid gases hydrogen chloride ("HCl") and hydrogen fluoride ("HF"), NRG evaluated the potential for additional reductions through the use of a wet electrostatic precipitator. Applicant's Ex. 7 at 57, 59 & Appendix C (MACT Application). The cost analysis presented in the MACT Application demonstrates that the wet electrostatic precipitator is not a cost-effective control option, and thus the wet electrostatic precipitator is not grounds for a beyond-the-floor MACT emission limit for those HAPs. Applicant's Ex. 7 at 57 & 59 (MACT Application).

With respect to mercury emissions, the beyond-the-floor analysis confirmed, as stated above, that the best-controlled similar sources employ the same suite of controls that NRG has proposed for Limestone Unit 3. Applicant's Ex. 7 at 56 (MACT Application). No further analysis of alternatives is required in such situations. As the Executive Director stated in its response to public comments, "[n]either the applicant nor the TCEQ are required to explain why control technologies beyond those currently demonstrated were not evaluated." Applicant's Ex. 57 at 5 (Executive Director's Response to Public Comments, MACT Application).

The record demonstrates that NRG considered alternative control technologies in the MACT Application where appropriate.

IV. The State Air Quality/PSD Permit establishes BACT emission limits for total PM/PM₁₀, NO_x and CO

The ALJs recommend issuance of the State Air Quality/PSD Permit with the following changes to the BACT emission limits established by the Executive Director:

- Lower the annual average total PM/PM₁₀ emission limit from the Executive Director's BACT determination of 0.035 lb/MMBtu to 0.025 lb/MMBtu
- Lower the 30-day rolling average emission limit for NO_x from the Executive Director's BACT determination of 0.07 lb/MMBtu to 0.06 lb/MMBtu
- Lower the 30-day rolling average emission limit for CO from the Executive Director's BACT determination of 0.15 lb/MMBtu to 0.12 lb/MMBtu

The emission limits for total PM/PM₁₀, NO_x and CO from Limestone Unit 3 proposed in NRG's State Air Quality/PSD Application and established in the State Air Quality/PSD Permit following the Executive Director's technical review of the application represent BACT. The ALJs' proposed emission limits for total PM/PM₁₀, NO_x and CO represent more stringent than, and therefore beyond, BACT emission limits.

NRG supplemented its June 2006 State Air Quality/PSD Application with a June 2007 BACT update based on the latest information regarding emission limits established for similar sources, nationwide. The Executive Director conducted a thorough technical review of the information submitted by NRG, performed its own independent review of available information, and following that review established the BACT emission limits included in the State Air Quality/PSD Permit.

The record demonstrates that the limits established in the State Air Quality/PSD Permit for total PM/PM₁₀, NO_x and CO, like the other criteria pollutants, represent BACT. Lower emission limits for total PM/PM₁₀ were not proposed as BACT based on the uncertainty associated with the condensible particulate matter (“CPM”) fraction of total PM/PM₁₀. Applicant’s Ex. 49 at 27:3-23 (W. Frazier). The Executive Director approved this 0.035 lb/MMBtu as BACT for total PM/PM₁₀, citing concerns regarding CPM test methods and the CPM contributions of the higher sulfur fuels (bituminous coal and petroleum coke) to be burned in Limestone Unit 3. Applicant’s Ex. 12 at 28 (State Air Quality/PSD Application, Executive Director’s Response to Public Comment). The 30-day rolling average NO_x limit of 0.07 lb/MMBtu was proposed as BACT based on the fact that Limestone Unit 3 must also meet an annual NO_x limit of 0.05 lb/MMBtu. Applicant’s Ex. 49 at 24:14 - 25:23 (W. Frazier). The Executive Director explained in its response to comments that this BACT proposal “is as stringent as any recently permitted pulverized coal boiler burning only subbituminous coal.” Applicant’s Ex. 12 at 27 (State Air Quality/PSD Application, Executive Director’s Response to Public Comment). The CO BACT limit of 0.15 lb/MMBtu was determined with a recognition that NO_x and CO have an inverse relationship, and that the NO_x/CO emission limits proposed for Limestone Unit 3 are among the most stringent proposed for a coal-fired EGU. Applicant’s Ex. 49 at 27:24 - 28:10 (W. Frazier). The Executive Director approved the CO BACT limit proposed by NRG based on this trade-off of NO_x and CO, adding that “[n]one of the recently permitted PC boilers have additional CO controls proposed or required.” Applicant’s Ex. 12 at 28 (State Air Quality/PSD Application, Executive Director’s Response to Public Comment).

NRG considers the changes to the emission limits for total PM/PM₁₀, NO_x and CO proposed by the ALJs to represent beyond-BACT limits that disregard the results of the thorough control technology evaluation that the Executive Director performed in conducting its technical review of the Limestone Unit 3 project State Air Quality/PSD Application. However, NRG does not except to those proposed changes, and commits to operate the state-of-the-art emissions controls planned for Limestone Unit 3 in a manner that will achieve the beyond-BACT emission limits proposed by the ALJs.

V. Correction to Special Condition No. 43 of the State Air Quality/PSD Permit

In addition to the annual no net increase commitment required by Special Condition No. 42, as part of an understanding reached with a stakeholder interested in the Limestone Unit 3 project, NRG Texas agreed to hold cumulative short-term NO_x emissions (*i.e.*, 30-day rolling average emissions) from Limestone Units 1, 2 and 3 following the commercial operation of Limestone Unit 3 to levels actually experienced by Limestone Units 1 and 2 during the June-September periods of 2006 through 2007. NRG proposed language for an additional Special Condition to the State Air Quality/PSD Permit in its Closing Brief. The ALJs' proposed a permit condition to make this short-term commitment part of the permit in proposed Special Condition No. 43; however, by including a reference to "the lowest" 30-day rolling average emissions from the time periods identified in the condition, the ALJs' proposed Special Condition No. 43 is inconsistent with NRG's voluntary commitment and should not be made an enforceable part of the permit.

The settlement agreement requires that site-wide NO_x emissions measured on a 30-day rolling average basis shall not exceed the average of actual monitored emission levels observed during the June-September periods of 2006 through 2007. NRG did not commit to the lowest 30-day rolling average within that period. To establish a permit condition consistent with its voluntary commitment, NRG respectfully requests that the Commission replace Special Condition No. 43 as proposed by the ALJs with the following:

Special Condition No. 43

The permit holder will have no increase in 30-day rolling average site-wide emissions of NO_x from the Limestone Electric Generating Station upon initial start-up of LMS Unit 3. The combined 30-day rolling average NO_x emissions from the LMS Unit 1, LMS Unit 2 and LMS Unit 3 shall not exceed a total of [*] on a 30-day rolling average. NRG Texas shall maintain records demonstrating compliance with this Special Condition.

* NRG Texas will provide this data to the Executive Director no later than 90 days after the issuance of this permit. NRG Texas commits to a baseline 30-day rolling average emission rate for NO_x based on an average of actual monitored emission levels observed during the June-September 2006 and June-September 2007 time periods.

This requested correction is also included on Attachment A.

VI. Technical Correction to the Order

NRG respectfully requests that the following corrections be made to apparent typographical errors in the Proposed Order:

Findings of Fact

308. The Case-by-Case MACT emission limit for HAP ~~non-metal~~ metal emissions from the Limestone Unit 3 project auxiliary boiler corresponds to a Filterable PM emission limit of 0.0022 lb/MMBtu.

Order

- 1.a. Special Condition No. 42: The permit holder will have no net increase in annual site-wide emissions of NO_x, SO₂, and Hg from the Limestone Electric Generating Station upon initial start-up of LMS Unit 3. The reduction of emissions relied upon for ensuring no net increase in annual emissions of NO_x, SO₂, and Hg shall occur no later than initial start-up of the unit. Following the initial start-up of LMS Unit 3, the combined annual NO_x emissions from LMS Unit 1, LMS Unit 2, and LMS Unit 3 shall not exceed a total of 12,056.6 tons per year, and the combined annual SO₂ emissions from LMS Unit 1, LMS Unit 2, and LMS Unit 3 shall not exceed a total of 16,844.8 tons per year, and the combined annual Hg emissions from LMS Unit 1, LMS Unit 2, and LMS Unit 3 shall not exceed a total of 1,084.5 ~~tons~~ pounds per year.

These changes, which have also been marked on Attachment A, constitute simple corrections of typographical errors and will ensure consistency between the Order, the State Air Quality/PSD Application and Permit, and the MACT Application and Permit.

VII. Conclusion

The record in this matter overwhelmingly demonstrates that the Limestone Unit 3 project satisfies all requirements for issuance of the proposed State Air Quality/PSD and MACT Permits. The State Air Quality/PSD Permit requires that NRG meet at least BACT emission limits, and the air quality analysis submitted by NRG and approved by the Executive Director and the ALJs demonstrates that emissions from the Limestone Unit 3 project will be protective of the public health and physical property. The MACT Permit requires that NRG meet MACT emission limits for all HAPs from Limestone Unit 3 and the Limestone Unit 3 project auxiliary boiler.

With respect to the emissions controls to be employed for mercury, the MACT Application (1) establishes a mercury emission limit for Limestone Unit 3 that represents MACT

and for which compliance must be demonstrated with continuous monitoring, (2) identifies the suite of emissions controls that will be used to control mercury and commits to use of sorbent injection or other effective technology to enhance the performance those controls, and (3) was deemed by the Executive Director to provide sufficient information about the mercury controls to assure compliance with the MACT Permit's stringent mercury limit. Moreover, the MACT Permit requires that NRG provide all changed or new engineering specifications for the mercury controls as an application update in advance of start-up of Limestone Unit 3.

The MACT Application satisfies regulatory requirements, and the MACT Permit will assure compliance with the stringent MACT emission limitation established for mercury. Accordingly, NRG requests that the Commission issue an Order approving NRG's applications and the issuance of the State Air Quality/PSD Permit and the MACT Permit authorizing construction of the Limestone Unit 3 project.

Respectfully submitted,

BAKER BOTTS L.L.P.

By: _____

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NRG TEXAS POWER LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served the original and seven copies of the Applicant NRG Texas Power LLC's Exceptions to the Proposal for Decision and Order on the Chief Clerk of the TCEQ, as well as the following persons on this 13th day of July, 2009:

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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The Honorable Tommy Broyles
Administrative Law Judge
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Via Hand Delivery

FOR SIERRA CLUB

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CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

ATTACHMENT A

APPLICANT NRG TEXAS POWER LLC'S REQUESTED CHANGES TO THE

ORDER

REGARDING THE APPLICATION BY NRG TEXAS POWER LLC FOR STATE AIR QUALITY PERMIT 79188, PREVENTION OF SIGNIFICANT DETERIORATION AIR QUALITY PERMIT PSD-TX-1072, AND HAZARDOUS AIR POLLUTANT MAJOR SOURCE PERMIT NO. HAP-14 TCEQ DOCKET NOS. 2007-1820-AIR and 2008-1210-AIR SOAH DOCKET NOS. 582-08-0861 AND 582-08-4013

FINDINGS OF FACT

32. ~~Except in regard to mercury control technology, the~~ The Case-by-Case MACT Application contains all of the required elements of an FCAA section 112(g) preconstruction permit application filed under Chapter 116 of TCEQ's rules.
291. ~~NRG's Case by Case MACT Application did not specify a control technology selected by NRG that, if properly operated and maintained, will meet the proposed MACT emission limitations.~~
292. ~~NRG's Case by Case MACT Application did not identify technical information on the design, operation, size, estimated control efficiency of a control technology it intended to use for controlling mercury emissions at Limestone Unit 3.~~
293. ~~NRG's Case by Case MACT Application did not identify supporting documentation including identification of alternative control technologies considered by NRG to meet the proposed emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology.~~
294. ~~NRG has not identified a specific control technology it intends to use to control mercury emissions at Limestone Unit 3.~~
308. The Case-by-Case MACT emission limit for HAP ~~non-metal~~ metal emissions from the Limestone Unit 3 project auxiliary boiler corresponds to a Filterable PM emission limit of 0.0022 lb/MMBtu.

CONCLUSIONS OF LAW

43. ~~NRG's Case by Case MACT Application is deficient because it did not contain the information required by 40 C.F.R. § 63.43(e)(1) and (2)(xi) (xii) in regard to mercury emissions control technology.~~ In accordance with 30 TEX. ADMIN. CODE § 116.111(a)(2)(K), the Limestone Unit 3 project complies with all applicable requirements of Chapter 116 regarding case-by-case MACT review.

ORDER

- 1.a. Special Condition No. 42: Special Condition No. 42: The permit holder will have no net increase in annual site-wide emissions of NO_x, SO₂, and Hg from the Limestone Electric Generating Station upon initial start-up of LMS Unit 3. The reduction of emissions relied upon for ensuring no net increase in annual emissions of NO_x, SO₂, and Hg shall occur no later than initial start-up of the unit. Following the initial start-up of LMS Unit 3, the combined annual NO_x emissions from LMS Unit 1, LMS Unit 2, and LMS Unit 3 shall not exceed a total of 12,056.6 tons per year, and the combined annual SO₂ emissions from LMS Unit 1, LMS Unit 2, and LMS Unit 3 shall not exceed a total of 16,844.8 tons per year, and the combined annual Hg emissions from LMS Unit 1, LMS Unit 2, and LMS Unit 3 shall not exceed a total of 1,084.5 ~~tons~~ pounds per year.

- 1.b. Special Condition No. 43: The permit holder will have no increase in 30-day rolling average site-wide emissions of NO_x from the Limestone Electric Generating Station upon initial start-up of LMS Unit 3. ~~To determine the baseline 30-day rolling average of NO_x emissions which NRG Texas may not exceed, NRG Texas shall use the lowest 30-day rolling average from any consecutive 30-day period within the June-September 2006 or June-September 2007 time periods. The combined 30-day rolling average NO_x emissions from the LMS Unit 1, LMS Unit 2 and LMS Unit 3 shall not exceed a total of [*] on a 30-day rolling average.~~ NRG Texas shall maintain records demonstrating compliance with this Special Condition.

* NRG Texas will provide this data to the Executive Director no later than 90 days after the issuance of this permit. NRG Texas commits to a baseline 30-day rolling average emission rate for NO_x based on an average of actual monitored emission levels observed during the June-September 2006 and June-September 2007 time periods.

3. ~~The application of NRG Texas for a federal Clean Air Act section 112(g) case-by-case maximum achievable control technology (MACT) determination fails to satisfy applicable requirements and is therefore remanded to allow NRG Texas to satisfy the Case-by-Case MACT requirements Hazardous Air Pollutant Major Source [FCAA § 112(g)] Permit No. HAP-14 is approved and the permit attached is approved and issued.~~